

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI
Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2541
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
9 **STATE OF CALIFORNIA**

10
11 In the Matter of the Interim Suspension Order
Against:
12 **SMOG'S TEST ONLY; SUSANA GARCIA,**
13 **OWNER**
14 **8101 S. Main Street., #C**
Los Angeles, CA 90003
15 **Automotive Repair Dealer Registration No.**
ARD 268465
16 **Smog Check, Test Only, Station License No.**
TC 268465,
17
18 **LUIS ENRIQUE MACIAS**
1412 W. 96th Street
Los Angeles, CA 90047
19
20 **Smog Check Inspector and Smog Check**
Repair Technician License No. EI/EO
632185,
21
22 **and**
23 **CARLOS H. HERNANDEZRODRIGUEZ**
9702 S. Halldale Ave
Los Angeles, CA 90047
24
25 **Advanced Emission Specialist Technician**
License No. EA 632171
26 Respondents.

Case No. 79/13-23

ACCUSATION

1 Complainant alleges:

2 **PARTIES**

3 1. John Wallauch (Complainant) brings this Accusation solely in his official capacity as
4 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

5 2. On or about March 22, 2012, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 268465 to Smog's Test Only; Susana Garcia, Owner
7 (Respondent Smog's Test Only). The Automotive Repair Dealer Registration was in full force
8 and effect at all times relevant to the charges brought herein and will expire on March 31, 2013,
9 unless renewed.

10 3. On or about April 16, 2012, the Bureau of Automotive Repair issued Smog Check,
11 Test Only, Station License Number TC 268465 to Respondent Smog's Test Only. The Smog
12 Check, Test Only, Station License was in full force and effect at all times relevant to the charges
13 brought herein and will expire on March 31, 2013, unless renewed.

14 4. On or about June 17, 2010, the Bureau of Automotive Repair issued Smog Check
15 Inspector and Smog Check Repair Technician License Number EI/EO 632185 to Luis Enrique
16 Macias (Respondent Macias). The Smog Check Inspector and Smog Check Repair Technician
17 License was in full force and effect at all times relevant to the charges brought herein and will
18 expire on July 31, 2014, unless renewed.

19 5. On or about June 14, 2010, the Bureau of Automotive Repair issued Advanced
20 Emission Specialist Technician License Number EA 632171 to Carlos H. Hernandezrodriguez
21 (Respondent Hernandezrodriguez). The Advanced Emission Specialist Technician License was
22 in full force and effect at all times relevant to the charges brought herein and will expire on June
23 30, 2014, unless renewed.

24 **STATUTORY PROVISIONS**

25 6. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
26 part:

27 (a) The director, where the automotive repair dealer cannot show there
28 was a bona fide error, may deny, suspend, revoke, or place on probation the
registration of an automotive repair dealer for any of the following acts or omissions

1 related to the conduct of the business of the automotive repair dealer, which are done
2 by the automotive repair dealer or any automotive technician, employee, partner,
3 officer, or member of the automotive repair dealer.

4 (1) Making or authorizing in any manner or by any means whatever any
5 statement written or oral which is untrue or misleading, and which is known, or which
6 by the exercise of reasonable care should be known, to be untrue or misleading.

7 (4) Any other conduct that constitutes fraud.

8 (b) Except as provided for in subdivision (c), if an automotive repair
9 dealer operates more than one place of business in this state, the director pursuant to
10 subdivision (a) shall only suspend, revoke, or place on probation the registration of
11 the specific place of business which has violated any of the provisions of this chapter.
12 This violation, or action by the director, shall not affect in any manner the right of the
13 automotive repair dealer to operate his or her other places of business.

14 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
15 place on probation the registration for all places of business operated in this state by
16 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
17 engaged in a course of repeated and willful violations of this chapter, or regulations
18 adopted pursuant to it.

19 7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
20 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
21 proceeding against an automotive repair dealer or to render a decision invalidating a registration
22 temporarily or permanently.

23 8. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
24 "commission," "committee," "department," "division," "examining committee," "program," and
25 "agency." "License" includes certificate, registration or other means to engage in a business or
26 profession regulated by the Code.

27 9. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
28 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
the Motor Vehicle Inspection Program.

10. Section 44072.2 of the Health and Safety Code states, in pertinent part:

The director may suspend, revoke, or take other disciplinary action
against a license as provided in this article if the licensee, or any partner, officer, or
director thereof, does any of the following:

(a) Violates any section of this chapter [the Motor Vehicle Inspection
Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted
pursuant to it, which related to the licensed activities.

(c) Violates any of the regulations adopted by the director pursuant to

1 this chapter.

2 (d) Commits any act involving dishonesty, fraud, or deceit whereby
3 another is injured.

4 11. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
5 expiration or suspension of a license by operation of law, or by order or decision of the Director
6 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
7 the Director of jurisdiction to proceed with disciplinary action.

8 12. Section 44072.8 of the Health and Safety Code states:

9 When a license has been revoked or suspended following a hearing under
10 this article, any additional license issued under this chapter in the name of the
11 licensee may be likewise revoked or suspended by the director.

12 **COST RECOVERY**

13 13. Code section 125.3 provides, in pertinent part, that a Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 14. On or about July 11, 2012, the BAR performed a video recorded surveillance at
18 Respondent Smog's Test Only's smog check test only facility. The surveillance operation and
19 information obtained from the BAR's Vehicle Information Database ("VID") revealed that
20 Respondent Smog's Test Only, through her technician Respondent Macias as well as Respondent
21 Hernandezrodriguez, performed six (6) smog inspections that resulted in the issuance of
22 electronic certificates of compliance for the vehicles set forth in Table 1, below, certifying that
23 they had tested and inspected those vehicles and that the vehicles were in compliance with
24 applicable laws and regulations:

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Table 1

Test Times	Vehicle in EIS Data (License Plate #)	Vehicle Tested (License Plate #)	Certificate Issued
1108-1118	2002 Toyota Tacoma (6Z49735)	1998 Lincoln Navigator (6GLS432)	XJ289741C
1123-1132	1997 Mitsubishi Eclipse (6DEP482)	1998 Lincoln Navigator (6GLS432)	XJ289742C
1139-1153	1983 Mazda RX7 (4PLC833)	1998 Lincoln Navigator (6GLS432) and 1992 Lexus LS400 (2Z1S787)	XJ289743C
1203-1218	1999 Ford Pickup Truck (6A59437)	1998 Lincoln Navigator (6GLS432) and 1992 Lexus LS400 (2Z1S787)	XJ289744C
1245-1259	1990 Lincoln Continental (2TWD957)	1992 Lexus LS400 2Z1S787	XJ289745C
1306-1317	1998 Chevrolet S-10 Pickup (6P66944)	1992 Lexus LS400 (2Z1S787)	XJ289746C

15. In fact, Respondents performed the smog inspections using the clean piping method by utilizing the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the electronic certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

16. Respondent Smog's Test Only has subjected her registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about July 11, 2012, she made statements which she knew or which by exercise of reasonable care she should have known were untrue or misleading when she issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

1 SECOND CAUSE FOR DISCIPLINE

2 (Fraud)

3 17. Respondent Smog's Test Only has subjected her registration to discipline under Code
4 section 9884.7, subdivision (a)(4), in that on or about July 11, 2012, she committed acts which
5 constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table
6 1, above, without performing bona fide inspections of the emission control devices and systems
7 on those vehicles, thereby depriving the People of the State of California of the protection
8 afforded by the Motor Vehicle Inspection Program.

9 THIRD CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

11 18. Respondent Smog's Test Only has subjected her station license to discipline under
12 Health and Safety Code section 44072.2, subdivision (a), in that on or about July 11, 2012,
13 regarding the vehicles set forth in Table 1, above, she violated sections of that Code, as follows:

14 a. **Section 44012, subdivision (a):** Respondent Smog's Test Only failed to determine
15 that all emission control devices and systems required by law were installed and functioning
16 correctly in accordance with test procedures.

17 b. **Section 44012, subdivision (f):** Respondent Smog's Test Only failed to perform
18 emission control tests on those vehicles in accordance with procedures prescribed by the
19 department.

20 c. **Section 44015, subdivision (b):** Respondent Smog's Test Only issued electronic
21 certificates of compliance without properly testing and inspecting the vehicles to determine if
22 they were in compliance with section 44012 of that Code.

23 d. **Section 44059:** Respondent Smog's Test Only willfully made false entries for the
24 electronic certificates of compliance by certifying that those vehicles had been inspected as
25 required when, in fact, they had not.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 19. Respondent Smog's Test Only has subjected her station license to discipline under
4 Health and Safety Code section 44072.2, subdivision (c), in that on or about July 11, 2012,
5 regarding the vehicles set forth in Table 1, above, she violated sections of the California Code of
6 Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent Smog's Test Only falsely or
8 fraudulently issued electronic certificates of compliance without performing bona fide inspections
9 of the emission control devices and systems on those vehicles as required by Health and Safety
10 Code section 44012.

11 b. **Section 3340.35, subdivision (c):** Respondent Smog's Test Only issued electronic
12 certificates of compliance even though those vehicles had not been inspected in accordance with
13 section 3340.42 of that Code.

14 c. **Section 3340.42:** Respondent Smog's Test Only failed to conduct the required smog
15 tests and inspections on those vehicles in accordance with the Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Dishonesty, Fraud or Deceit)**

18 20. Respondent Smog's Test Only subjected her station license to discipline under Health
19 and Safety Code section 44072.2, subdivision (d), in that on or about July 11, 2012, regarding the
20 vehicles set forth in Table 1, above, she committed acts involving dishonesty, fraud or deceit
21 whereby another was injured by issuing electronic certificates of compliance for those vehicles
22 without performing bona fide inspections of the emission control devices and system on those
23 vehicles, thereby depriving the People of the State of California of the protection afforded by the
24 Motor Vehicle Inspection Program.

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program)**

3 21. Respondent Macias has subjected his technician license to discipline under Health
4 and Safety Code section 44072.2, subdivision (a), in that on or about July 11, 2012, regarding the
5 vehicles set forth in Table 1, he violated sections of that Code, as follows:

6 a. **Section 44012, subdivision (a):** Respondent Macias failed to determine that all
7 emission control devices and systems required by law were installed and functioning correctly in
8 accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent Macias failed to perform emission
10 control tests on those vehicles in accordance with procedures prescribed by the department.

11 c. **Section 44032:** Respondent Macias failed to perform tests of the emission control
12 devices and systems on those vehicles in accordance with section 44012 of that Code, in that
13 those vehicles had been clean piped.

14 d. **Section 44059:** Respondent Macias willfully made false entries for the electronic
15 certificates of compliance by certifying that those vehicles had been inspected as required when,
16 in fact, they had not.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

19 22. Respondent Macias has subjected his technician license to discipline under Health
20 and Safety Code section 44072.2, subdivision (c), in that on or about July 11, 2012, regarding the
21 vehicles set forth in Table 1, he violated sections of the California Code of Regulations, title 16,
22 as follows:

23 a. **Section 3340.24, subdivision (c):** Respondent Macias falsely or fraudulently issued
24 electronic certificates of compliance without performing bona fide inspections of the emission
25 control devices and systems on those vehicles as required by Health and Safety Code section
26 44012.

27 b. **Section 3340.30, subdivision (a):** Respondent Macias failed to inspect and test those
28 vehicles in accordance with Health and Safety Code section 44012.

1 c. **Section 3340.41, subdivision (c):** Respondent Macias entered false information into
2 the Emission Inspection System (“EIS”) for the electronic certificates of compliance by entering
3 vehicle emission control information for vehicles other than the vehicles being certified.

4 d. **Section 3340.42:** Respondent Macias failed to conduct the required smog tests and
5 inspections on those vehicles in accordance with the Bureau’s specifications.

6 **EIGHTH CAUSE FOR DISCIPLINE**

7 **(Dishonesty, Fraud or Deceit)**

8 23. Respondent Macias has subjected his technician license to discipline under Health
9 and Safety Code section 44072.2, subdivision (d), in that on or about July 11, 2012, he committed
10 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic
11 certificates of compliance for the vehicles set forth in Table 1, above, without performing bona
12 fide inspections of the emission control devices and systems on those vehicles, thereby depriving
13 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
14 Program.

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Violations of the Motor Vehicle Inspection Program)**

17 24.. Respondent Hernandezrodriguez has subjected his technician license to discipline
18 under Health and Safety Code section 44072.2, subdivision (a), in that on or about July 11, 2012,
19 regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

20 a. **Section 44012, subdivision (a):** Respondent Hernandezrodriguez failed to determine
21 that all emission control devices and systems required by law were installed and functioning
22 correctly in accordance with test procedures.

23 b. **Section 44012, subdivision (f):** Respondent Hernandezrodriguez failed to perform
24 emission control tests on those vehicles in accordance with procedures prescribed by the
25 department.

26 c. **Section 44032:** Respondent Hernandezrodriguez failed to perform tests of the
27 emission control devices and systems on those vehicles in accordance with section 44012 of that
28 Code, in that those vehicles had been clean piped.

1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 25. Respondent Hernandezrodriguez has subjected his technician license to discipline
4 under Health and Safety Code section 44072.2, subdivision (c), in that on or about July 11, 2012,
5 regarding the vehicles set forth in Table 1, above, he violated sections of the California Code of
6 Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a):** Respondent Hernandezrodriguez failed to inspect
8 and test those vehicles in accordance with Health and Safety Code section 44012.

9 b. **Section 3340.41, subdivision (c):** Respondent Hernandezrodriguez entered false
10 information into the EIS for the electronic certificates of compliance by entering vehicle emission
11 control information for vehicles other than the vehicles being certified.

12 c. **Section 3340.42:** Respondent Hernandezrodriguez failed to conduct the required
13 smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

14 **ELEVENTH CAUSE FOR DISCIPLINE**

15 **(Dishonesty, Fraud or Deceit)**

16 26. Respondent Hernandezrodriguez has subjected his technician license to discipline
17 under Health and Safety Code section 44072.2, subdivision (d), in that on or about July 11, 2012,
18 he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
19 electronic certificates of compliance for those vehicles set forth in Table 1, above, without
20 performing bona fide inspections of the emission control devices and systems on those vehicles,
21 thereby depriving the People of the State of California of the protection afforded by the Motor
22 Vehicle Inspection Program.

23 **OTHER MATTERS**

24 27. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
25 or permanently or refuse to validate, the registrations for all places of business operated in this
26 state by Susana Garcia doing business as Smog's Test Only, upon a finding that she has, or is,
27 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
28 automotive repair dealer.

1 7. Revoking or suspending Advanced Emission Specialist Technician License Number
2 EA 632171, issued to Carlos H. Hernandezrodriguez;

3 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
4 & Safety Code in the name of Carlos H. Hernandezrodriguez;

5 9. Ordering Susana Garcia, Luis Enrique Macias and Carlos H. Hernandezrodriguez to
6 pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement
7 of this case, pursuant to Business and Professions Code section 125.3; and,

8 10. Taking such other and further action as deemed necessary and proper.

9
10 DATED: November 20, 2012

John Wallauch by [Signature]
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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